

9 FAM 45.5 REDETERMINATION OF ADMISSIBILITY IF VISA VALIDITY EXTENDED

(TL:VISA-135; 2-29-96)

(a) An alien to whom an immigrant visa is issued pursuant to this Part who elects to have the validity of the visa extended as provided in § 9 FAM 45.4 shall have his or her admissibility redetermined prior to actual travel to the United States as follows:

(1) If the alien is the beneficiary of a petition to accord status under section 124 of Pub. L. 101-649 which was supported by a specific offer of employment from the petitioning entity, or is the spouse or child of such an alien, a redetermination of admissibility is required only if the anticipated date of actual application for admission for permanent residence is more than four months following the date of visa issuance;

(2) If the alien is the beneficiary of a petition to accord status under section 124 of Pub. L. 101-649 which was supported by a general assurance from the petitioning entity that an appropriate job would be made available to the alien upon entry, or is the spouse or child of such an alien, a redetermination of admissibility is required whenever the alien proposes to apply for admission for permanent residence, whether within four months of the date of visa issuance or later.

(b) When an alien to whom an immigrant visa is issued pursuant to this Part elects to have the validity of the visa extended pursuant to paragraph (a) of this section, the consular officer shall notify the alien in writing of the requirement for a redetermination of admissibility as provided in paragraph (a) and shall endorse the visa "Section 154 applies." Thereafter, the alien shall, not sooner than four months preceding the contemplated date of application for admission for permanent residence notify the appropriate consular officer of his or her intention to travel to the United States for this purpose. The consular officer shall thereupon schedule an appointment with such alien for the purpose of determining whether or not the alien remains admissible into the United States for permanent residence. If the consular officer determines that the alien continues to be so admissible, he or she shall issue to the alien a duplicate immigrant visa as provided in § 9 FAM 45.6 of this Part. If the consular officer determines that the alien has become inadmissible to the United States, he or she shall revoke the visa as provided in § 9 FAM 42.82 of Part 42 of this Title.

(c) An alien who elects to have the period of validity of his or her immigrant visa extended pursuant to § 9 FAM 45.4 and whose entitlement to the immigrant classification of such visa was based upon his or her status as a child at the time of visa issuance shall not cease to be entitled to such visa by reason of attaining age twenty-one or marrying prior to his or her application for admission for permanent residence.

(d) An alien who seeks a redetermination of admissibility pursuant to paragraph (a) of this section shall not be found to be admissible unless he or she:

(1) Has continued to be employed by the petitioning entity in a qualifying position since issuance of the visa and presents a letter describing the specific qualifying employment the alien will take upon admission for permanent residence; or

(2) Is the spouse or child accompanying or following to join such an alien.

(e) For the purpose of this section "qualifying position" shall include both the position occupied by the alien at the time the petition in the alien's behalf was approved and any other position within the petitioning entity's organization, regardless of geographical location, which would otherwise meet the requirements for approval of such a petition in the alien's behalf. For the purposes of this section, "qualifying employment" shall mean any position in the United States of the kind required for approval of such a petition.

[Amended by 61 FR 1834, Jan. 24, 1996].